United States.

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NORTHERN PACIFIC RAILROAD COMPANY GRANT.

A Resume of the Several Acts of Congress Relating to the Grant of Public Lands to the Northern Pacific Railroad Company, Predecessor in Interest of the Present Northern Pacific Railway Company, the Rules and Regulations of the Department Pertaining Thereto, and Citations and Listings of the Court and Departmental Decisions Interpreting and Construing said Acts.

- I. ACTS OF CONGRESS.
- II. DEPARTMENTAL REGULATIONS AND INSTRUCTIONS.
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I. ACTS OF CONGRESS.

(2) Act of July 2, 1864 (13 Stat., 355).

The original legislation relating to the Northern Pacific Railroad Company Grant is contained in the act of July 2, 1864. The purpose of the act was to bring about the construction and operation of a line of railroad extending from Lake Superior on Lake Sound, and of

a branch line to Portland, Oregon, for which the United States agreed to make concessions of grants of public lands in the States through which the railroad was to pass.

The act of July 2, 1866 contains 20 sections, but only five of these sections are of particular interest at this time in connection with the adjustment of land matters between the United States and the grantees.

Section 2 created the company as a body corporate and defined in general terms the route of the proposed road, that is, from a point on Lake Superior, in the State of Minnesota or Wisconsin (Ashland, Wisconsin), to Puget Sound (Tacoma, Washington), with a branch line from a point on the main line to Portland, Oregon.

Section 3 granted a right of way, 200 feet on each side of the railroad, over the public lands, together with all necessary ground for switches, station buildings, workshops, etc., and the right to take earth, stone, timber, and other material from public lands adjacent to the line of road. The United States agreed to extinguish as rapidly as could be consistent with the public policy and the welfare of the Indians, the Indian title to all lands

falling under the operation of the act and acquired in the donation to the road.

Section 3 granted to the railroad company every alternate section (odd numbered) of any appropriated, reserved, nonmineral public land, to the amount of 10 sections per mile (20 miles) on each side of the road in each State, and 20 sections per mile (40 miles) in each Territory through which the road should be constructed. Provision was made that wherever, prior to the time of definite location of the road and the filing of a plat thereof in the General Land Office, any of said sections or parts of said sections should have been reserved or disposed of by the United States, or settled upon by homesteaders, nonmineral lands in lieu thereof could be selected under the direction of the Secretary of the Interior. In alternate sections, not more than 10 miles beyond the limits of the sections originally granted. This section specifically excepted all mineral lands from the grant, but declared that lands containing iron and coal were not to be considered as mineral lands, and provided that unsurveyed agricultural lands in odd numbered sections nearest to the

line of road could be selected in lieu of lands in the place limits lost by reason of their mineral character.

NOTE. The proviso relating to mineral lands in Section 3, as printed in 13 Stat., 365, 366, is erroneous in that the words "and within 50 miles thereof" were omitted. These words were contained in the act as passed by Congress and should have been inserted in the published statutes (See 41 L. D., 571).

Section 4 provided for the appointment of commissioners to inspect the construction of the road, and also for the language of patents upon conditions specified therein.

Section 5 directed the survey of the lands for a distance of 40 miles in width on both sides of the entire line of road, after the general route should be fixed, and specified that the granted lands were not to be liable to sale, or entry, or preemption, except by the company, before or after survey, but that the provisions of the preemption and homestead laws were to be applicable to all other lands, when surveyed on the line of the road.

The grant specified, among other things, that the construction of the road was to be commenced within

two years from the approval of the act and that the whole road should be completed by July 4, 1876 (See Sec. 8). Acceptance of the conditions and impositions of the act was to be signified in writing by the company within two years after the passage of the act (See Sec. 12).

(b) Act of May 7, 1866 (14 Stat., 355). This was a resolution that extended the time of commencing and completing the construction of the road for the period of two years.

(c) Act of July 1, 1866 (15 Stat., 255). This resolution granted the company until July 3, 1870, within which to begin construction, and until July 4, 1877, to complete the road.

(d) Act of March 1, 1869 (15 Stat., 345). This act authorized the issuance of bonds to be secured by a mortgage upon the road.

(e) Act of April 10, 1869 (16 Stat., 57). The company was authorized to extend its branch line from Portland, Oregon to Puget Sound, and

to connect the same with its main line west of the Cascade Mountains, in the Territory of Washington, subject to the conditions and provisions of the act of July 8, 1864. The act provided that no additional public lands should be granted, except the land included in the right of way on the line of the extension.

(f) act of May 31, 1870 (15 Stat., 378).

This resolution modified the act of July 2, 1864, and among other things, provided for the issuance of bonds on the execution of a mortgage which was to be filed and recorded in the office of the Secretary of the Interior. It further provided that if there were not sufficient public lands at the time of final location of the road, in any State or Territory in which the road was to be located, to satisfy the grant of July 2, 1864, then the company should be entitled, under the direction of the Secretary of the Interior, to receive sufficient odd numbered sections of nonmineral public lands in such State or Territory, within 10 miles on each side of the road, to make up the deficiency caused by disposition of any of the place lands by grant, sale, reservation, occupation by homesteaders, prescription, or by

other disposition, subsequent to the passage of the act of July 2, 1863; but all lands granted to the company that remain unsold or undisposed of or subject to the company's mortgage at the expiration of five years of the completion of the entire road, were to be subject to settlement and preemption.

The act of May 31, 1870, extended the indemnity limits 10 miles further on each side of the road, thus creating a second indemnity limit.

Under the several acts above cited, the limits of the grant in places extended 20 miles on each side of the road in the States, and 40 miles on each side of the road in the Territories. The limits of the first indemnity zone were 20 miles in the States and 40 miles in the Territories. The second indemnity zone created by the act of May 31, 1870 made the extreme indemnity limits 40 miles in the States and 80 miles in the Territories. The mineral indemnity limits were 50 miles in both States and Territories.

(g) Act of July 15, 1870 (15 Stat., 291,305).

The proviso in the above act required the Northern Pacific Railroad Company to pay costs of survey

of public lands within the granted limits.

(h) act of September 29, 1890 (25 Stat., 496, 497).

This act declared that portion of the Northern Pacific Railroad grant between Wallaie, Washington, and Portland, Oregon, forfeited. The act of September 29, 1890, was amended by the acts of February 18, 1891 (26 Stat., 764), December 12, 1895 (28 Stat., 16), and February 18, 1897 (29 Stat., 535), January 25, 1896 (29 Stat., 14).

LEGISLATION RELATING TO ADJUSTMENT OF THE GRANT.

(s) Act of June 22, 1874 (18 Stat., 194), as amended by the act of August 29, 1890 (26 Stat., 369).

This act was an inducement offered to railroad companies that were entitled to land embraced in filings and entries by settlers, to relinquish in favor of such settlers and receive other lands in lieu of those surrendered. The amendatory act of August 29, 1890, enlarged the class of cases in which relinquishment by the companies would be permissible, by removing the requirement that an entry or filing should have been allowed.

The right to select indemnity under these acts extended to any nonmineral public lands within the limits of the grant. The act was not mandatory.

(b) Act of March 3, 1887 (24 Stat., 556).

The act of March 3, 1887, directed the Secretary of the Interior to immediately adjust the unadjusted railroad land grants. It also provided for the cancellation of patents erroneously issued to railroad companies, the perfecting of erroneously canceled homestead entries under certain conditions and with certain exceptions, and the issuance of patents to purchasers of railroad grant lands.

This act was amended by the act of February 12, 1896 (29 Stat., 6) by adding a proviso to Section 4 as to purchase money paid to railroad companies by purchasers for grant lands. See also amendatory act of May 17, 1906 (34 Stat., 197).

(c) Act of October 3, 1890 (26 Stat., 647).

This act grants relief to homestead settlers who went upon lands within the second indemnity belt of the Northern Pacific Railroad grant between August 15, 1887, and January 1, 1889, and who had submitted final

proof, by transfer of their entries to other tracts of unappropriated public lands. Section 2 of the act also granted the right of transfer to actual settlers who had made entries but who had not submitted final proof.

(d) Act of June 3, 1896 (29 Stat., 345).

This act was for the relief of settlers on the Northern Pacific second indemnity grant lands in Minnesota, to whom other lands were allowed for so-called entries, and for uncompleted entries.

(e) Act of July 1, 1898 (30 Stat., 597, 620).

The act of July 1, 1898, provided that where prior to January 1, 1898, any odd numbered section, or part thereof, in either the place or indemnity limits of the Northern Pacific Railroad grant, to which the right of the company had attached by definite location or by selection and which had been purchased from the United States or settled upon or claimed in good faith under public land laws, the company could, upon relinquishment of the granted lands to the United States, select unappropriated, unreserved, nonmineral public land elsewhere in any State through which the road passes, if the purchaser, settler, or claimant should

refuse to transfer his claim. All such selections must be for surveyed odd numbered sections. The Secretary was directed to prepare lists of such lands, the same to be conclusive when accepted by the company. Provisions was also made for voluntary relinquishment by the company where persons had settled upon unsurveyed lands which, when surveyed, would be odd numbered sections and within the grant; also for voluntary transfer by individuals of their claims to other unsurveyed, unreserved, unconsidered public lands, surveyed or unsurveyed.

(f) Act of March 2, 1901 (31 Stat., 950).

This act extended the provisions of the act of July 1, 1898, to cover conflicting claims, initiated within the indemnity limits of the grant, while the railroad company's selection was pending, and which selection the company had not waived or abandoned.

(g) Act of May 17, 1906 (34 Stat., 197).

This act extended the provisions of the act of July 1, 1898, more, to include any bona fide settlement or entry, between January 21, 1898, and May 31, 1906, due to erroneous decisions of the land department.

respecting the withdrawal of the general route of the company's road between Wallula, Washington and Portland, Oregon, except that the lieu selections were to be for lands in the same State in which the base lands were located.

(a) act of March 2, 1899 (30 Stat., 993).

This act granted the privilege to the railroad company to exchange lands which it had received under its grant and situated in Mt. Rainier National Park and the Pacific Forest Reserve, for unappropriated, unserved, nonmineral, unsurveyed public lands in any State through which the road passes. The company was permitted, however, to file a selection for such lands while unsurveyed, but the description of the selection must be made to conform with the correct description after survey.

(1) Act of February 27, 1917 (39 Stat., 946).

This was an act for the relief of settlers who, prior to July 1, 1918, had gone upon odd numbered sections within the primary limits of the Northern Pacific Railroad Company grant within the State of Washington. The terms of the act of July 1, 1928 (30 Stat., 620) were declared to be applicable.

(1) Act of February 28, 1919, (40 Stat., 1094).

This act provides for the relief of certain persons upon indemnity lands in that portion of the former reservation for the Gros Ventre, Piegas, Blood, Blackfoot, and River Crow Indians, south of the Missouri River, in the State of Montana, found to be in the possession of actual bona fide qualified settlers under the homestead laws.

D. DEPARTMENTAL REGULATIONS AND INSTRUCTIONS.

(a) act of July 2, 1864.

The executive has the power to make withdrawals. Instructions of May 17, 1895 (2 L. D., 511).

Instructions pertaining to indemnity selections under the act were issued May 28, 1883 (12 L. D., 196), and August 4, 1885 (4 L. D., 90).

For instructions relating to the restoration of indemnity withdrawals, see circulars of September 6, 1887 (5 L. D., 181); November 19, 1897 (6 L. D., 388); December 16, 1897 (5 L. D., 419); and December 22, 1897 (6 L. D., 456).

Indemnity selections within a mineral belt.

See Instructions of July 9, 1894 (19 L.D., 21); August 15, 1894 (19 L. D., 105); April 9, 1897 (24 L.D., 321); May 10, 1897 (24 L.D., 415); December 24, 1914 (43 L.D., 476).

Mineral indemnity selections by the Northern Pacific Railroad Company were not limited to the State in which a loss occurred, and such selections may be made in any State through which the road passes, within a distance of 50 miles on either side of the line of the road. See instructions of December 12, 1911 (41 L.D., 574); December 12, 1911 (41 L. D., 575); July 24, 1912 (41 L. D., 571).

These instructions call attention to the error contained in the published statute, as to the omission of the words "within 50 miles thereof," in the proviso of Section 3 of the act of 1864 pertaining to the exclusion of mineral lands and the selection of indemnity therefor.

(b) Act of July 22, 1874.

See circulars of November 1, 1890 (11 L. D., 434) and September 22, 1902 (31 L.D., 424).

(a) Act of March 3, 1887.

Instructions pertaining to the adjustment of the grant are contained in circulars of April 30, 1887, approved May 31, 1887 (5 L. D., 627); November 22, 1887 (6 L. D., 275); February 21, 1888 (6 L. D., 544); February 13, 1888 (7 L. D., 348); August 30, 1890 (11 L. D., 229).

(d) Act of September 20, 1890, as amended.
See circular of March 21, 1891 (12 L. D., 508).

(e) Act of October 1, 1890.

See instructions of November 7, 1890 (11 L. D., 433).

(f) Act of June 3, 1896.

See instructions of August 5, 1896 (25 L. D., 256), relating to settlers on the second indemnity belt in Minnesota.

(g) Act of July 1, 1898.

See instructions of February 14, 1899 (28 L. D., 103); June 3, 1899 (28 L. D., 470); and November 21, 1899 (29 L. D., 316).

(h) Act of March 2, 1901.

See Instructions of June 15, 1901 (50 L.D.,

629).

(i) Act of May 17, 1906.

See Instructions of July 5, 1906 (85 L.D.,

10).

(j) Act of February 27, 1917.

See Instructions of April 29, 1917 (46 L.D.,

98).

(k) Act of February 28, 1919.

See Instructions of May 2, 1919 (47 L.D.,

128).

Present Grant
to the
1625
1629

III. COURT DECISIONS.

Place and Quantity of the Grant.

The grant of July 2, 1864, to the Northern Pacific Railroad Company, was in the nature of a float until the map of definite location should be filed, and it excluded all lands that had been reserved, sold, or otherwise appropriated before the filing of such map with the Secretary of the Interior. (U. S. v. Oregon & C.R.R. Co.; 176 U.S., 28).

The company took no lands until its line was definitely located, and Congress could in the meantime grant lands within its general route in aid of other roads. The transmission of a map of its general route to the Secretary of the Interior, which was not accepted by the land department, was not a reservation of the lands (U. S. v. Northern Pacific Railroad Company; 193 U.S., 118).

The company did not acquire by the act of 1864 any vested interests until definite location of the road was shown by its map, properly filed (Oregon & C. R.R. Co. v. U. S.; 189 U.S., 111); and land that was

not public land at the date of the grant, although subsequently becoming so, did not pass by the grant. (Northern Lumber Company v. O'Brien; 139 Fed., 520).

(a) The act of July 2, 1864, was a grant in praesenti. (St. Paul & Pacific R. R. Co. v. Northern Pacific R. R. Co.; 139 U.S., 1. Northern Pacific R.R. Co. v. Fredrick; 221 U.S., 213). However, unsurveyed public lands within the place limits of the grant that were actually occupied by homesteaded settlers were excepted from the operation of the grant, and land withdrawn for the benefit of another railroad company did not pass under the grant, and when released became a part of the public domain, subject to disposal under the general land laws. (Northern Lumber Co. v. O'Brien; 204 U.S., 195). The force of the act as a grant in praesenti was not impaired by the provision for patents, as the road should be completed (St. Paul & Pacific R.R. Co. v. Northern Pacific R.R. Co.; 139 U.S., 1). When the line of the road should have been fully determined, the company's right became complete except as to prior rights. But it did not become complete by

the filing of an insufficient map of location (Oregon & U. R.R. Co. v. U. S.; 77 Fed., 73).

The entire route did not have to be fixed at the same time. (U. S. v. Southern Pacific R.R. Co.; 146 U.S., 597).

While the grant was one in presenti, yet the survey of the odd numbered sections was resorted to the Government, and until their survey the United States retained a special interest in the lands. The Government surveys of public lands are controlling (Cleason v. White; 139 U.S., 50).

(b) The act of July 2, 1864, granted to the Northern Pacific Railroad Company only those alternate odd numbered sections to which, at the time of definite location, the United States had valid title, and which then were free from preemption or other claims or rights. The company acquired no vested interest in any particular section of land until after the definite location, and acceptance of its map thereof by the Secretary of the Interior, and until then the grant was in the nature of a float. (Helson v. Northern Pacific R. Co.; 188 U.S., 108).

After the filing of the general route, the President was to cause the lands along the entire line, 40 miles in width on both sides, to be surveyed as fast as required for the construction of the road. The granted sections within the place limits were to be withheld from sale, entry, and presumption, except as against presumption and homestead occupants whose settlement preceded the definite location of the line. All lands within the indemnity limits were to be, and remain subject to the operation of the presumption and homestead laws, save as the odd numbered sections should be taken out of the operation of those laws by indemnity selections made to supply losses within the place limits.

(Sewitt v. Schultz; 180 U.S., 139.

Weyerhaeuser v. Hoyt; 219 U.S., 380. U.S. v. Northern Pacific R.R. Co.; 41 Sup. Ct., 459, Advanced Sheet).

The company duly accepted the terms of the grant, filed appropriate maps of the general route afterwards definitely located the line and constructed and completed the road from Ashland, Wisconsin, to Tacoma, Washington. The definite location was com-

pleted in 1884 and the construction in 1897. The road as completed was examined and favorably reported by the commissioners and accepted by the President.

(c) The act of 1864, as modified by the resolution of 1870, amounted to a contract which was accepted by the company, and by performance on its part the company was entitled to have the Government comply with the terms of the contract. (Burke v. Southern Pacific Railroad Co.; 284 U.S., 569).

Definite Location.

The line of the road is definitely located when the map thereof is filed and the Secretary of the Interior gives his consent and approval to such location. The date of the survey of a road in the field is not to be accepted as indefinite location. (Railway Company v. Railway Company; 97 U.S., 491. Van Wyeck v. Knawale; 106 U. S., 360). The line fixed by definite location may not be changed except by legislative authority. (Missouri & Kansas & Texas Railway Co. v. Kansas Pacific Railway Co.; 97 U.S., 491. U.S. v. Burlington & Missouri Railway Co.; 98 U.S., 383). Rights that attach by definite

location are absolute until forfeiture is declared.
(Schulenberg v. Harriman; 21 Wall., 44).

A homestead entry existing at the date of the grant of 1864, but relinquished prior to the definite location of the road, prevented land from passing under the grant.

Oregon, etc. Railroad Co. v. U. S.;
148 Fed., 804.
U. S. v. Oregon, etc. Railroad Co.;
143 Fed., 770.

Land within the exterior lines of the general route was not reserved, sold, granted, or otherwise appropriated by the act of 1864, so as to prevent Congress from otherwise disposing of it at any time before the map of definite location was filed.

Wilcox v. Southern Oregon Land Co.;
176, U. S., 51.

For other decisions relating to definite location, see:

Deseret Salt Co. v. Harpey; 142 U.S., 241.
U. S. v. Montana Lumber Co.; 196 U.S., 573.
U.S. v. Northern Pacific Railroad Co.; 193
U. S., 1.
Nelson v. Northern Pacific Railroad Co.; 188
U. S., 108.

For the nature of the title prior to definite location, see: St. Paul, etc., R.R. Co. v. Northern Pac.
S.E. Co.; 150 U.S., 1.
Northern Lumber Co. v. O'Brien; 204 U.S.,
190, 196.

Withdrawal.

The land department had the authority, and it was its duty to withdraw the lands, and to give timely notice thereof as to the date and extent of the granted limits for the protection of both company and settlers.

Wolcott v. Des Moines; 5 Wall., 681.
Wolsay v. Chapman; 101 U.S., 755.

By Section 6 of the act of 1864, the department has held that withdrawal for the benefit of the company was authorized, following the holding of Utts v. Northern Pacific Railroad Company; 119 U.S., 171.

After the withdrawal of lands for the benefit of the company, only a special grant could confer rights as against it.

St. Paul, etc., Railroad Co. v. Northern Pacific Railroad Co.; 139 U. S., 1.

The issuance of the order of the Commissioner of the General Land Office on the filing of the plat showing the road's Federal route, withdrawing land from settlement, precluded subsequent homestead entry.

Northern Pacific Railway Co. v. Nelson; 22 Wash., 523; 51 Pac., 706.

The withdrawal should extend only along a

route filed on the map filed.

143 U. S., 58,
New Orleans, etc., Railroad Co. v. Parker;

An entry made prior to notice of withdrawal is
valid.

143 U. S., 58,
Northern Pacific Railroad Co. v. Ancker; 53
Fed., 557.

Necessity for Survey.

While the grant was one in presenti, yet
it was necessary for the Government to survey the lands
before the legal title could attach.

U. S. v. Montana Lumber Co.; 136 U. S., 573.
U. S. v. Longhrey; 172 U. S., 206.
Wagoner, etc. Railroad Co. v. Kansas Pacific
Railroad Co.; 97 U. S., 491.

Deseret Salt Co. v. Tarpey; 142 U. S., 241.

After the survey of the lands, it was not neces-
sary to issue a patent for lands within the place limits.

143 U. S., 58.
Northern Pacific Railroad Co. v. Colburn; 164

Indemnity.

The portion of the act of 1854 relating to in-
demnity lands was as much a part of the contract as that
relating to the place lands.

Payne v. Central Pacific Railway Co.;
41 Sup., 614; 614, Larance Sheets.

and a selection of indemnity lands by the company is unnecessary in order to give it the right to such lands as against the Government where the total amount remaining open to selection within the indemnity limits is less than the quantity that the company is entitled to select; nor is it necessary in such case to specify the particular base for which indemnity is to be taken.

Butte v. Southern Pacific Railroad Co.;
234 U. S., 669.

This rule does not apply, however, as against private parties. Section 6 of the act provided that all lands in the indemnity limits should remain subject to the preemption and homestead laws until selected; and the company must stand a loss where the indemnity lands were reduced by preemption and homestead claims, before selection, to a quantity insufficient to indemnify the company for losses within the original limits.

As to title to indemnity lands is vested until a selection is made by which they are definitely ascer-

tained and the selection has been approved by the Secretary of the Interior.

Daniels v. Wagner; 205 Fed., 239,
Northern Pacific Railway Co. v. Wash;
104 Minn., 418; 116 M.W., 940.

No interest is acquired by virtue of the mere filing of the list of selections.

Stoll v. Drexel; 199 U.S., 566.

Until valid selection is made from indemnity lands, they are open to settlement.

Esvelt v. Schultz; 190 U.S., 139.

Clark v. Herrington; 185 U.S., 309.

The Secretary of the Interior was not authorized to withdraw from settlement lands within indemnity limits before the selections were made.

Southern Pacific Railroad Co. v. Bell;
183 U.S., 579.

Lands included in indemnity selections that have been approved by the Secretary of the Interior, were not subject to entry between the date of the filing of the list and its approval.

Weyerhaeuser v. Hoyt; 219 U.S., 412.

The purpose of the indemnity was to make up for the deficiency in the place limits; and until it be

shown that there was deficiency in the place limits,
no indemnity could be taken.

St. Paul, etc. Railroad Co. v. Northern
Pacific Railroad Co.; 139 U.S., 1.

But where the deficiency was greater than the
indemnity limits, no formal selection was necessary.
And the Secretary of the Interior had no discretion to
require one.

Southern Pacific Railroad Co. v. Bell;
185 U. S., 582.

Until selection is made and approved, the title
to indemnity lands is in the Government, and subject to
its disposal.

Kansas Pacific Railroad Co. v. Atchafalca, To-
poka & Santa Fe Railroad Co.; 112 U.S., 414.

U.S. v. Colton, Marble & Linn Co.; 146 U.S., 615.

The court, in St. Paul, etc. Railroad Co. v.

Northern Pacific Railroad Co.; 139 U.S., 1, did not hold
that title could be acquired without selection.

U. S. v. Mo., Kans., & Tex. Railway Co.; 141
U. S., 376.

Second Indemnity.

The joint resolution of May 31, 1870, created a

second indemnity belt; and it authorized selection of indemnity therein where a proper basis for the selection was furnished.

Indian Lands.

Lands reserved from sale for the benefit of Indians at the date of the grant of 1864, but released before the line of the road was definitely located, did not pass to the railroad company, but remained public lands subject to disposal by Congress.

U. S. v. Grand Rapids, etc. Railroad Co.,
154 Fed., 135.

A grant in general terms of public lands in the aid of a railroad company, such as the grant of 1864, does not apply to and include lands within an Indian reservation.

Leavesworth, etc. Railroad Co. v. U. S.,
92 U. S., 723.
Bardon v. Northern Pacific Railroad Co.,
145 U. S., 535.
Minn. v. Hitchcock, 145 U. S., 373.

The Indian title existing in occupancy was alone that which the grant undertook to extinguish.

Mineral Lands.

All mineral lands (excepting iron and coal lands), known or unknown, at the date of the grant, were excluded from the grant.

Jordan v. Northern Pacific Railroad Co.;
154 U. S., 288, 215.

Tolson Ranch Co. v. Cook; 191 U. S., 532, 540.
But subsequent discovery of mineral after the passing of title, does not affect the title.
Northern Pacific Railroad Co. v. Walker;
47 Fed., 683.

The term "mineral" is not synonymous with "metalliferous".

Northern Pacific Railroad Co. v. Soderberg;
188 U. S., 525, 529.

Forfeiture.

Under the act of July 2, 1864, non completion of the road within the time limit did not create a forfeiture.

U. S. v. Northern Pacific Railroad Co.;
177 U. S., 425.

Since the Northern Pacific Railroad Co. never made a definite location of any line of road between

Portland, Oregon, and Wallula, Washington, the original grant never took effect as to any land between those places; therefore, lands contiguous to the line built from Portland to Tacoma, with the grant of the General Resolution of May 31, 1870, were public lands of the United States, not reserved, sold, granted, or otherwise appropriated, and by said joint resolution were granted to the company upon conditions which having been performed, the title of the company, and its veins, became vested and protected and not affected by the above act.

Northern Pacific Railroad Co. v. Belknap;
82 Fed., 270.

IV. DEPARTMENTAL DECISIONS.

Place and quantity of the grant.

The act of May 31, 1870, did not make a new grant for the Cascade Branch of the Northern Pacific, and as to lands within the place limits along said line, their status under the grant of 1864 must determine the right of the company thereto.

Western T. Northern Pacific Railroad Co.; 29 L.D., 224.

Definite Location.

The line of the road is definitely located when the map is filed and the Secretary of the Interior gives his consent and approval to such location.

Central Pacific Railroad Co.; 5 L.D., 561.

Beck v. Central Pacific Railroad Co.;

5 L.D., 45.

Southern & Northern Alabama Railroad Co.;

5 L.D., 394.

The line fixed by definite location may not be changed except by legislative authority.

Chic.; St. Paul, Milwaukee & Omaha Railway Co.; 5 L. D., 196.

Rights that attach by definite location are absolute until forfeiture is declared.

M'Om V. St. Paul, Minnesota & Manitoba Railway Co.; 9 L.D., 245.

The status of the land at time of definite location determines whether it is subject to the grant, irrespective of any subsequent order for withdrawal.

Olney v. Hastings & Nelson Railway Co.;

11 L. D., 186.

Title to the odd numbered sections within the primary limits vested at the time of definite location.

James et al. v. Polas; 36 L.D., 526.

where the line is definitely fixed, the grant relates back and takes the lands reserved by the filing of the map of the General route, so far as the line of definite location corresponds with the line of General route.

Talbot v. Northern Pacific Railroad Co.; 2 L.D. 529.

Withdrawal.

It is the duty of the land department to withdraw the lands and give timely notice thereof.

Northern Pacific Railroad Co.; 2 L.D. 511.

An Executive withdrawal is not effective until notice thereof is received at the local U. S. land office.

Blanchard v. Willemette Valley & Cascade Mt. Wagon Road Co.; 5 L. D., 651.

The power of the department to withdraw the granted lands without any direction expressed in the act is well settled. Its purpose is to prevent the defeat of the grant by private appropriation.

Northern Pacific Railroad Co.; 2 L.D., 511.

The extension of the homestead and preemption laws by Section 6 of the act of 1864 prohibits an Executive

withdrawal of the indemnity lands.

27 L.D., 78,
Northern Pacific Railroad Co., T. Davis;

244.
Stans T. Northern Pacific Railroad Co.; 7 L.D.,

Indemnity.

The company is entitled to indemnity for lands excepted from its grant on account of a prior grant to another company.

22 L. D., 506,
Miller T. Northern Pacific Railroad Co.;

Land not within the withdrawal on the general route, but within the indemnity limits on the definite location, was free from the operation of the grant until duly selected.

Northern Pacific Railroad Co., T. Miller;
7 L. D., 100.

The object of the law is to give a company within the entire indemnity belt just what has been lost in place by other appropriation within the granted limits, to the extent of the lands entitled to be created, and not more.

Northern Pacific Railroad Co.; 2 L.D., 511.

By the act of 1870, lands could be taken in the second indemnity belt where a proper basis was shown

therefor.

Northern Pacific Railroad Co.; 8 L.D., 13.
Northern Pacific Railway Co.; 37 L.D., 298.

The company is entitled to select indemnity
for losses incurred by an unsurveyed Indian reservation.
Northern Pacific Railroad Co.; 20 L.D., 187.

For decisions relating to the necessity of
making indemnity selection, see:

Northern Pacific Railroad Co.; 2 L.D., 280.
St. Paul & Pacific Railroad Co. v. Larsen;
3 L.D., 306.
Northern Pacific Railroad Co. v. Walters;
18 L.D., 339.
Southern Pacific Railroad Co.; 18 L.D., 314.
Oregon & California Railroad Co. v. Bales;
23 L.D., 251.
Northern Pacific Railroad Co. v. Flannery;
20 L.D., 156.
Northern Pacific Railroad Co. v. Jackson;
20 L.D., 238.
Northern Pacific Railroad Co. v. Kirkpatrick;
26 L.D., 159.
Northern Pacific Railroad Co. v. Pettib;
14 L.D., 591.
William Hickey; 26 L.D., 621.

Where has been no departmental recognition
of an ascertained deficiency in the Northern Pacific
grant; nor has the company been relieved on account of
such deficiency from the specification of losses in
making indemnity selections.

Northern Pacific Railroad Co. v. Streib;
25 L.D., 589.

as to the right of the company to select indemnity within the second belt, see:

Northern Pacific Railroad Co. v. St. Paul, Minnesota & Manitoba Railway Co.; 25 L. D., 67, 68.
Northern Pacific Railroad Co. v. Larson; 19 L. D., 233.
Northern Pacific Railroad Co. v. Rooney; 29 L. D., 242.

Indian Lands.

Lands embraced within a technical Indian reservation at the date of definite location of the road are reserved from the operation of the grant.

Wellens v. Northern Pacific Railroad Co.; 16 L. D., 223.

Land at the date of the grant that was in an Indian reservation, created by a treaty, is excepted from the grant, though at definite location such land had been relieved from such reservation, subject only to the right of Indian occupancy.

Warren v. Northern Pacific Railroad Co.; 22 L. D., 658.

The odd numbered sections in the Yakima Indian Reservation did not pass under the grant and afford legal bases for indemnity.

Hanniston v. Northern Pacific Railroad Co., et al; 25 L. D., 543.
Hagen v. Northern Pacific Railroad Co.; 26 L. D., 312.

The grant of 1864 did not attach to any Indian reservation that had been created prior to that time and was then existing, and the United States was not required to extinguish the Indian title to such lands.

Phelps v. Northern Pacific Railroad Co.;
1 L. D., 269.

The grant did not attach to the lands within the Crow Indian Reservation.

Brown v. Northern Pacific Railroad Co.;
2 L. D., 519, 520.

Mineral Lands.

A final mineral return by the commissioners appointed under the act of February 26, 1895 (28 Stat., 633) operates to except the lands so classified from the grant. See instructions of November 30, 1897 (25 L.D., 446). The classification is not final, however, until approved by the Secretary of the Interior.

Northern Pacific Railway Co. v. Ledoux et al.;
32 L. D., 24.

Lands containing valuable mineral deposits, whether of the metalliferous or fossiliferous class, are excepted from the grant.

Pacific Coast Marble Co. v. Northern Pacific Railroad Co.; 25 L.D., 235.

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for the right to select mineral indemnity.

Henney V. Northern Pacific Railway Co.,
43 L. D., 302.

Respectfully submitted,
D. M. Greene,
Att. Geny.

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